

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TIMOTHY OLIPHANT,

Plaintiff,

v.

No. CIV-11-00782 MV-GBW

SOCIAL SECURITY
ADMINISTRATION, Michael
J. Astrue, Commissioner of SSA,

Defendant.

ORDER

Plaintiff, who is seeking judicial review of the denial of her application for social security benefits, filed a Motion for Leave to Proceed in forma pauperis. *Doc. 2*

“In order to succeed on a motion to proceed IFP, the movant must show a financial inability to pay the required filing fees, as well as the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised in the action.” *Lister v. Dep’t Of Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005)(citation omitted). Section 1915(a)(1) applies to all plaintiffs seeking IFP status. *Id.*; see also *Griffin v. Zavaras*, 336 F. App’x 846, 849 n.2 (10th Cir. 2009). Neither Plaintiff’s complaint nor her motion set forth any basis on which the Court may evaluate whether she has “a reasoned, nonfrivolous argument on the law and facts in support of the issues raised in the action.” *Lister*, 408 F.3d at 1312. Plaintiff’s Complaint says only that he “alleges that the final decision of the defendant is erroneous

as a matter of law and regulation for the following reasons, including but not limited to: the ALJ's residual functional capacity and credibility determinations are contrary to substantial evidence and are contrary to law and the ALJ erred by failing to develop the record." *Doc. 1* at 2. This conclusory statement is insufficient for the Court to perform the second prong of the *Lister* analysis. As such, the Court cannot, at this time, grant Plaintiff's Motion.¹

Plaintiff will have thirty (30) days to cure this defect by either filing an amended complaint or additional briefing. The amended complaint or the additional briefing shall present Plaintiff's reasoned, nonfrivolous argument on the law and facts in support of the issues raised. This briefing need not be a comprehensive explanation of Plaintiff's arguments but must give enough for the *Lister* review. After the selected filing has been made, or at the expiration of thirty days, the Court will then determine whether Plaintiff has met the test put forward in *Lister* and rule on Plaintiff's Motion.

IT IS SO ORDERED.



J.B. Wark
UNITED STATES MAGISTRATE JUDGE

¹ Because Plaintiff has failed to present any argument or factual allegations relevant to *Lister*'s second prong, the Court need not address whether Plaintiff has shown a financial inability to pay the required filing fees.

